IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THURSDAY, THE THIRTIETH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and
THE HON'BLE MR JUSTICE C.V.RAMULU

W.A. No. 1461 of 2004, W.P. No. 235 of 2003 & W.P. No. 16201 of 2004

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WRIT APPEAL NO : 1461 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 01/04/2004 in WP NO : 235 OF 2003 on the file of the High Court.)

Between:

M/s Lakshmi Sugars, rep.by its Managing Partner, Mr Inder Raj Agarwal, S/o Gulraj Agarwal, R/o H.No.15/2/127, Maharajgunj, Siddamber Bazar, Hyderabad

..... APPELLANT

AND

1 The Co-operative Sub-Registrar / Arbitrator, A.P.Vardhaman (M) Co-op Bank Limited, O/o The Divisional Co-operative Officer, Golconda Division, Hyderabad
2 A.P.Vardhaman (M) Co-operative Urban Bank Ltd., 3-5-141/E/7, Geetanjali Complex, Edenbagh, Ramkote, Hyderabad

.....RESPONDENT(S)

Counsel for the Appellant:MR.R.N.HEMENDRANATH REDDY

Counsel for the Respondent No.1: GP FOR COOPERATION

Counsel for the Respondent No.2: Mr. K. Gopala Krishna Murthy

WRIT PETITION NO : 235 of 2003

Between:

Inder Raj Agarwal s/o Gulraj Agarwal
H.No.15-2-127.,Maharaj Gunj, Siddiamber Bazar.,Hyderabad.

..... PETITIONER

AND

1 Cooperative Sub Registrar AP Vardhaman Cooperative Bank Ltd.,
Golconda Division.,Hyderabad.
2 A.P.Vardhaman Co-op Urban Bank Ltd Edenbagh.,Ramkote.,Hyderabad.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, order or direction more particularly one in the nature of Writ of Mandamus, declaring that the 1st respondent has no jurisdiction to entertain ARC No.97/2002/CUB/GD in view of the provisions of the Recovery of Debts due to Banks and Financial Institutions Act.,1993.

and

WRIT PETITION NO : 16201 of 2004

Between:

1 M/s.Lakshmi Sugars, D.No.15-2-127, Maharajgunj, Hyderabad
represented by its Partner Sri Inderraj Agarwal, r/o Plot No.28, Prashant Nagar, Jubilee Hills, Hyderabad.
2 Sri Inderraj Agarwal, s/o Gulraj Agarwal,
r/o Plot No.28, Prashant Nagar, Jubilee Hills, Hyderabad.
3 Vikas Agarwal, s/o Inderraj Agarwal,
r/o Plot No.28, Prashant Nagar, Jubilee Hills, Hyderabad.
4 Smt.Angur Bala Agarwal, w/o Inder Raj Agarwal,
r/o Plot No.28, Prashant Nagar, Jubilee Hills, Hyderabad.
5 Kamal Agarwal, s/o Inder Raj Agarwal,
r/o Plot No.28, Prashant Nagar, Jubilee Hills, Hyderabad.

..... PETITIONER(S)

AND

1 The Cooperative Sub Registrar/Arbitrator, Office of the Divisional Cooperative Officer, Golconda Division, Hyderabad.
2 The A.P.Vardhaman (M), Cooperative Bank, rep., by its Chief Executive Officer, Admn. Office 3-5-141/E/7, Geetanjali Complex, Edenbagh, Ramkote, Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to

issue an appropriate writ, order or direction, more in the nature of certiorari calling for the records relating to and connected with the order dated 21-7-2004 as made in IA No.522/2004 in CTA SR No.2213/2004 and quash the same and consequently condone the delay of 659 days in filing the appeal against the award passed by the 1st respondent in ARC No.97/2002 dated 4-5-2002

Counsel for the Petitioner:MR.R.N.HEMENDRANATH REDDY

Counsel for the Respondent No.1: GP FOR COOPERATION

Counsel for the Respondent No.2: Mr. K. Gopala Krishna Murthy

(In both the writ petitions)

The Court made the following Oral Order: (per Sri Devinder Gupta,CJ)

Writ Petition No.235 of 2003 was filed by M/s. Laxmi Sugars, Hyderabad hereinafter referred to as “the petitioner”), questioning the action of respondents in entertaining A.R.C. No. 97/2002/CUB/GD in view of the provisions of the Recovery of Debts due to Banks and Financial Institutions Act,1993. This writ petition was filed on 3.1.2003. Interim stay was obtained and respondents-bank put in appearance and pointed out that already Award has been passed by the Arbitrator, instead of preferring appeal against the said Award, petitioner continued to agitate the matter in writ petition. On vacate application being filed by the respondent-Bank, the interim order was modified subject to the condition of the petitioner depositing half of the awarded amount, which was not paid and now writ appeal has been filed against the order putting the petitioner to terms of depositing one half of the amount awarded.

Final Award has been passed in favour of the respondent-bank for a sum of Rs. 54,49,786.25. According to the learned counsel for the petitioner, principal amount is Rs.45,00,000/-. Petitioner also availed of the opportunity of filing statutory appeal before the A.P. Cooperative Tribunal (for short "the Tribunal"), Hyderabad. Award has been passed on 4.2.2002, against which appeal was preferred with a delay of 659 days on 22.4.2004. Application for condonation of delay was dismissed by the Tribunal and the said order is also under challenge in Writ Petition No. 16201 of 2004.

We have taken up the appeal as well as the writ petition filed by the petitioner of which appeal has arisen and the fresh writ petition. In case, petitioner has already chosen to avail of the opportunity of preferring appeal against the Award in A.R.C. No. 97/2002, there is no manner of doubt that petitioner must continue to avail such remedy, in which proceedings, petitioner can take up all the questions raised in the earlier writ petition, including the question of jurisdiction of the Arbitrator. The question, however, is of condonation of delay.

Considering the facts and circumstances of the case, we are of the view that it will be but proper to condone the delay of 659 days in filing the appeal subject to putting the petitioner on certain terms. Petitioner has not deposited any amount and has availed the benefit of cash credit limits for a sum of Rs.45,00,000/- from the respondent bank.

Therefore, subject to the orders to be passed by the A.P. Cooperative Tribunal, Hyderabad on the petitioner's appeal, we set aside the order passed in W.V.M.P. No. 540 of 2004 in W.P. No. 235 of 2003 and the order of the A.P. Cooperative Tribunal, Hyderabad in I.A. No. 522 of 2004 in C.T.A. Sr. No. 2213 of 2001, dated 21.7.2004 impugned in Writ Petition No. 16021 of 2004 and condone the delay of 659 days in filing the appeal in CTA Sr No. 2213/2004, subject to the condition of the petitioner depositing with the respondent-bank a sum of Rs.15,00,000/- (Rupes fifteen lakhs only) within a period of six weeks from today. On such deposit being made, the Cooperative Tribunal shall entertain the appeal of the petitioner as having been filed within the period of limitation and proceed to decide the appeal in accordance with law, and, of course, will also consider the prayer of the petitioner for staying execution of the Award. It is also made clear that in case petitioner fails to deposit the amount of Rs.15,00,000/- as ordered by this Court within a period of six

weeks from today, the order passed by the Cooperative Tribunal in C.T.A. SR. No. 522 of 2004 on 21.7.2004 shall continue to remain in operation. It is also made clear that the amount so deposited by the petitioner will be subject to the result of the orders that would be passed in the appeal by the Cooperative Tribunal.

With leave and liberty granted to the petitioner to take all objections which have been taken in Writ Petition No. 235 of 2003, including the objection as regards jurisdiction of the Arbitrator before the Cooperative Tribunal, we dispose of the appeal and two writ petitions. No costs.

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DEVINDER GUPTA, CJ

Date: 30th September, 2004

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C.V.RAMULU,J

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To

1 The Co-operative Sub-Registrar / Arbitrator, A.P.Vardhaman (M) Co-op Bank Limited, O/o The Divisional Co-operative Officer, Golconda Division, Hyderabad.

2 A.P.Vardhaman (M) Co-operative Urban Bank Ltd., 3-5-141/E/7, Geetanjali Complex, Edenbagh, Ramkote, Hyderabad.

3 . Two C.Cs. to Government Pleader for Cooperation, High Court Buildings, Hyderabad.

4. Two C.D. copies